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Supreme Court, U.S.
FILED
AUG 8 1994
OFFICE OF THE CLERK

No. 94-31

In the Supreme Court of the United States

OCTOBER TERM, 1994

BUD RIGGINS AND DONALD MCVEAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing the order of the district court granting a judgment of acquittal following a jury verdict of guilty.

1. On March 2, 1992, petitioners were indicted by a grand jury sitting in the United States District Court for the Western District of Kentucky. They were charged with controlled substances and firearm offenses. Following a jury trial, petitioners were found guilty of conspiring and attempting to manufacture 3, 4-methylenedioxyamphetamine, in violation of 21 U.S.C. 846, and possession of triple-neck round-bottom flasks with intent to manufacture 3, 4-methylenedioxyamphetamine, in violation of 21 U.S.C. 843(a)(6).

On December 11, 1992, the trial court granted a post-verdict judgment of acquittal on the three controlled substances offenses. Pet. App. 20a-21a.[1] The court concluded that the proof was insufficient to prove guilt beyond a reasonable doubt.

2. The court of appeals reversed. Pet. App. 1a-19a. The court held that, taken in the light most favorable to the government, the evidence was sufficient for a reasonable jury to find petitioners guilty beyond a reasonable doubt.

3. Petitioners contend (Pet. 17-30) that the evidence was insufficient to support their convictions. They argue that the court of appeals did not require that the jury verdict be supported by substantial evidence (Pet. 17-22); that it allowed questionable inferences to support the verdict (Pet. 22-27); and that it adopted the citations in the government's brief without any critical analysis (Pet. 28-30).

Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court. The court of appeals' decision is not a final judgment against petitioners. After imposition of sentences by the district court, petitioners can again take an appeal to the court of appeals raising any issues that may be available to them, including any possible trial errors, and preserving the claims they have raised in their present petition. If the court of appeals affirms the final judgments against them, petitioners will then be able to present their current contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari. Accordingly, review by this Court of the

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[1] The court did not disturb the conviction of petitioner McVean for possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1).

court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

AUGUST 1994

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[2] Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.